

REMARKS – General

Rejections under 35 USC §103:

The OA rejects claims 1-7, 10, 13, and 15 under 35 USC §103 as being unpatentable in view of “Sasaki,” Japanese Laid Open Patent Application 7303209 and Usui, Japanese Laid Open Patent Application 2002222051. (Applicant notes – and has noted in previous replies – that per a professional English translation of the 7303209 application obtained by Applicant, the inventor is named Shuichi Murakami. The most recent OA refers again to the application as Sasaki. As Applicant believes the inventor to be named Murakami, the 7303209 application will be referred to herein as “Murakami.”)

In making the rejection, the OA submits that Murakami teaches the detection of mouse micromotion data by gathering a plurality of samples per click, obtaining at least one metric of mouse movement information characterizing the user from the mouse micromotion data, comparing the metric against a database, and authenticating the user. The OA states that Murakami fails to teach tracking mouse micromotions, wherein those mouse micromotions comprise any movement, track, or trace of the mouse as the user manipulates the cursor from one point to another point. The OA then submits that Usui teaches mouse tracking micromotions, where these mouse micromotions are any trace, track, or movement of the mouse as the user moves the mouse from one point to another point in the Abstract of Usui. The OA then, with a single statement, submits, “It would have been obvious to an artisan at the time of the invention to include Usui’s teaching with method Sassaki [sic] in order to provide users with the ability to monitor their micromovement.” Applicant respectfully traverses this rejection.

Per MPEP §2141, the guidelines for making a proper determination of obviousness have recently changed, and are guided by the decision by the Supreme Court in *KSR International Co. v. Tele-flex Inc.* (KSR), 550 U.S. ___, 82 (2007). MPEP §2141 states that the Court in KSR “...reaffirmed the familiar framework for determining obviousness as set forth in *Graham v. John Deere Co.*, 383 U.S. 1 (1966). The *Graham* analysis requires, in addition to a determination of the scope and contents of the prior art, a determination of the differences between the prior art and an applicant’s invention and

the level of ordinary skill in the pertinent art. Where there are differences, an Office Action "...must explain why the difference(s) would have been obvious to one of ordinary skill in the art." *Id.* Specifically, there must be a "...clear articulation of the reason(s) why the claimed invention would have been obvious." *Id.*

In making the case for obviousness, the Examiner has the burden of establishing the case in a well-reasoned and articulate way. "To facilitate review, this analysis should be made explicit." *KSR* at 14, citing *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*

This burden exists because "a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." *KSR* at 14. Where an invention is contended to be obvious based upon a combination of references, one should be able to identify particular reasons that would have prompted one of ordinary skill in the art to combine the prior art elements. *See KSR* at 14-15. The requirement prevents the use of "...the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability – the essence of hindsight." *Ecolochem, Inc. v. So. Cal. Edison Co.*, 227 F.3d 1361, 1371-72 (Fed Cir. 2000) (quoting *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999)). "When the motivation to combine the teachings of the references is not immediately apparent, it is the duty of the examiner to explain why the combination of the teachings is proper." *Ex parte Skinner*, 2 USPQ2d 1788 (Bd. Pat. App. & Inter. 1986).

Here, Applicant respectfully submits that there is no articulated reasoning with rational underpinning to support the legal conclusion of obviousness. Further, there is no evidence of obviousness found in the references. The OA provides a one-sentence rationale for combining the references: "to provide users with the ability to monitor their micromovement." Applicant respectfully traverses this rationale, as the references themselves provide no basis in combination for anticipating Applicant's invention.

As presented in prior responses, Applicant has provided ample evidence that Murakami analyzes a single click point for each mouse stroke. *See, e.g.*, Applicant's

Amendment and Reply dated March 31, 2007, pages 6-7 and Applicant's Amendment and Reply dated December 7, 2007, page 5.

Meanwhile, Usui merely teaches a mouse having two scroll buttons with which to adjust the view of a monitor. For example, turning to Usui FIGS. 1-4, a vertical scroll button 7 is shown, as is a horizontal scroll button 9. As Usui sets forth in his specification at paragraph [0014], the user may use these scroll buttons to alter the view on a computer without the need to manipulate the entire mouse. The user uses scroll button 7 for vertical manipulation and scroll button 9 for horizontal manipulation. There is simply no teaching of the use or tracking of mouse micromotions – as set forth in Applicant's claims – in the disclosure of Usui. To be sure, Usui encourages the use of no mouse motion, track, or trace at all, as the user should instead use Usui's provided scroll buttons to adjust a computer monitor in two directions. Indeed, the only mention of "micromotion" in Usui is a one-word English translation of a Japanese word in Usui's Abstract.

There is no simply teaching of capturing mouse micromotion data as claimed by Applicant in either Murakami or Usui. At best, the combination of Murakami and Usui teaches simply a mouse having two scroll wheels (Usui) that captures a single click point (Murakami) by a user. No mouse motion is required in this combination, as the scroll wheels of Usui are used for movement. The OA provides no additional articulated reasoning, rationale, or underpinning as to why one of ordinary skill in the art would find it obvious to combine Murakami and Usui to obtain Applicant's claimed invention as is required by KSR. Applicant respectfully submits that there is no evidence supporting why one would combine Usui and Murakami other than using Applicant's disclosure as hindsight, which is not permitted. If anything, the combination of Murakami and Usui teaches away from Applicant's invention in that the combination teaches the use of scroll wheels rather than the movement of the mouse. "A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." MPEP §2141.03, citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). "A prima facie case of obviousness may also be rebutted by showing that the art, in any material respect, teaches away from the claimed invention." MPEP §2144.05, citing *In re Geisler*, 116 F.3d 1465, 1471 (Fed. Cir. 1997).

Claims 8 and 9 are rejected under 35 USC §103 as being unpatentable over Murakami in view of Usui, further in view of Federova, US Patent Application No. 2004/0172564. Applicant respectfully traverses the rejection.

Applicant respectfully submits that none of Murakami, Usui, or Federova teaches the detection of mouse micromotion data by gathering a plurality of samples per mouse micromotion, wherein the mouse micromotion is any movement, track, or trace of the mouse as the user manipulates the mouse, as is claimed by Applicant independent claim 7 from which claims 8 and 9 depend. Applicant respectfully requests reconsideration of the rejection.

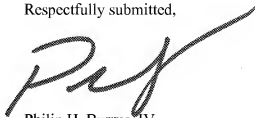
The OA rejects claim 12 over the combination of Murakami and Usui, further in view of Allen, US Pat. App. Publication No. 2003/0042298. Applicant respectfully submits that none of Murakami, Usui, or Allen teaches the detection of mouse micromotion data by gathering a plurality of samples per mouse micromotion, wherein the mouse micromotion is any movement, track, or trace of the mouse as the user manipulates the mouse, as is claimed by Applicant in claim 7, from which claims 12 depends. Applicant respectfully requests reconsideration of the rejection.

The OA rejects claims 11 and 14 as being unpatentable over Murakami and Usui, further in view of Gallagher, US Pat. No. 7,031,939. Applicant respectfully submits that neither the '209 Application nor Gallagher teaches the detection of mouse micromotion data by gathering a plurality of samples per mouse micromotion, wherein the mouse micromotion is any movement, track, or trace of the mouse as the user manipulates the mouse, as is claimed by Applicant in claim 7, from which claims 11 and 14 depend. Applicant respectfully requests reconsideration of the rejection.

CONCLUSION

For the above reasons, Applicants believe the specification and claims are now in proper form, and that the claims all define patentably over the prior art. Applicants believe this application is now in condition for allowance, for which they respectfully submit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P. Burrus, IV", with a long, sweeping horizontal stroke extending to the right.

Philip H. Burrus, IV

Attorney for Applicants

Registration No.: 45,432

404-797-8111

404-880-9912 (fax)